

\*\*E-Filed 5/28/2010\*\*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

QUIA CORPORATION,

Plaintiff/Counter-Defendant,

v.

MATTEL, INC. and FISHER-PRICE, INC.,

Defendants/Counter-Plaintiffs.

Case Number C 10-1902 JF (HRL)

ORDER<sup>1</sup> DENYING APPLICATION  
FOR TEMPORARY RESTRAINING  
ORDER AND SETTING EXPEDITED  
HEARING FOR MOTION FOR  
PRELIMINARY INJUNCTION

[re: docket no. 23]

Plaintiff seeks a temporary restraining order and preliminary injunction prohibiting Defendants from releasing, marketing, or otherwise promoting their children's educational product under the name iXL. After considering the moving papers, declarations, and exhibits presented by counsel, the Court concludes that Plaintiff will not suffer irreparable injury from Defendants' alleged servicemark infringement, if at all, before the product actually is available for sale to the general public, which will occur at the earliest in late June. (*See* Defs.' Opp'n 8 ("The Fisher-Price iXL is scheduled to be received by Defendants' distribution centers on or

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<sup>1</sup> This disposition is not designated for publication in the official reports.

1 before June 11, 2010, and is expected to be available for purchase in stores by late June and early  
2 July. Erickson Decl. ¶¶ 9-10.) Accordingly, the application for temporary restraining order will  
3 be denied, and Plaintiff's motion for preliminary injunction will be set on an expedited schedule.  
4 The motion will be heard on June 11, 2010, at 9:00 A.M. Plaintiff's reply brief is due on June 7,  
5 2010. The Court requests that Plaintiff respond specifically to Defendants' contention that case  
6 law establishing a presumption of irreparable harm upon a showing of a likelihood of success on  
7 the merits in a trademark case has been abrogated in light of *Winter v. Natural Resources*  
8 *Defense Council*, 129 S.Ct. 365 (2008).

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10 IT IS SO ORDERED.

11 DATED: May 28, 2010

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15 JEREMY FOGEL  
16 United States District Judge  
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